> These factors indicate that GTE has more limited opportunities than the BOCs to use bottleneck control over local exchange facilities for anticompetitive purposes in the enhanced services marketplace to the detriment of competitive providers and their customers.[44]

Inasmuch as the rules in question were designed to prevent anticompetitive behavior, the conclusion that GTE had more limited opportunities to engage in such behavior led logically to the conclusion that the restrictions necessary for the BOCs were not needed for GTE, so that applying the *BOC Requirements* to GTE "would extend regulation unnecessarily to GTE."[45]

> The continued existence of such distinctions indicates that the nonstructural safeguards established in the *Phase I Order*, while necessary for the BOCs, at the present time would extend regulation unnecessarily to GTE.[46]

In the context of Customer Premises Equipment ("CPE"), a similar analytic process produced the same essential conclusion: that different treatment of GTE as compared to the BOCs was warranted.[47]

> After careful consideration of the record and further analysis of the application of nonstructural safeguards to the provision of CPE by ITCs, we have determined that significant differences exist for these purposes between the BOCs and ITCs, including GTE, and that the new safeguards adopted in this Order [for the BOCs] should not be applied to any ITC.[48]

With specific reference to GTE, the Commission said:

> Although, in the aggregate, GTE's number of access lines and revenues are similar to those of the BOCs, we believe that GTE does not have the

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44 *Id.*

45 *Id.*

46 *Id.*

47 Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79, Report and Order, 2 FCC Rcd 143 ("*D.86-79 Report & Order*"), *modified*, 3 FCC Rcd 22 ("*D.86-79 Modified Order*") (1987).

48 *D.86-79 Report and Order*, 2 FCC Rcd at 156.

> same potential ability as the BOCs to engage in anticompetitive conduct in the provision of CPE.[49]

The Commission stressed the "predominantly suburban and rural character of most of GTE's service areas" containing "fewer major business customers" as a "key distinction between the BOCs and GTE."[50] Then the Commission noted that the "greatest potential for anticompetitive abuse occurs in the business market for CPE, especially CPE used by large business customers," so that "[w]here fewer such customers exist, there is less to be gained through anticompetitive conduct."[51] "In addition," the Report and Order said:

> GTE has neither national nor regional concentrated control of bottleneck facilities comparable to that exercised by the BOCs. Except for Hawaii, and perhaps Tampa and selected areas of Los Angeles, GTE's service areas are relatively small in numbers of lines when compared to the BOC service areas.[52]

"Moreover," the Commission said, "BOC service areas are concentrated in single, contiguous geographical regions, unlike those of GTE, whose operations spread from the east coast to Hawaii and encompass parts of 32 states."[53] The result is a "fractionalization of service territories [that] discourages, if not prevents, GTE from using its dominant position within its local exchange service areas for anticompetitive purposes in the CPE market."[54] And the Commission added:

> GTE territories are surrounded by the territories of other service providers, usually BOCs, that are in position to compete with GTE in the provision of CPE.[55]

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49 *Id.* at 158.

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

Petitions for reconsideration of the *D.86-79 Report and Order* further pursued the question of applying *BOC Requirements* to ITCs and particularly GTE. After the Commission noted that there were no complaints of anticompetitive conduct on the part of ITCs,[56] a party, *i.e.*, North American Telephone Association ("NATA"), raised a few supposed incidents. It was argued once more the *BOC Requirements* should apply to ITCs, specifically GTE, in association with the demand to require GTE to establish Centralized Operating Groups ("COGs").

For the fourth time the Commission examined GTE in relation to the BOCs and came to the same conclusion with respect to a restriction applied to the BOCs, holding that "imposition of a COG requirement on GTE would be unnecessarily burdensome."[57]

Further, the Commission took into account "more than three years of additional experience with the operations of the industry since we extended the structural separation requirements to the BOCs."[58] Finding "that the record does not provide any support for [the] claim that GTE is discriminating against independent CPE vendors," the Commission observed:

> The problems discussed ... are quite limited in number, and we find it significant that no one has filed formal or informal complaints with this Commission alleging that GTE has discriminated in its provision of network services to non-affiliated CPE vendors or their customers.[59]

In the anti-trust context, there is a parallel history in that the court approved different treatment of GTE based on important differences between GTE and the

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[56] *Id.* at 157-58: "[N]o commenter has asserted that any ITC has engaged in discriminatory conduct during this period based on the customer's source of CPE."

[57] *D.86-79 Modified Order,* 3 FCC Rcd at 28.

[58] *Id.*

[59] *Id.*

BOCs.[60] In approving the GTE Consent Decree, Judge Greene carefully considered and relied on the differences between GTE and the BOCs' Regional Holding Companies ("RHCs"). While "[e]ach of the Bell regional companies has a very strong, dominant position in local telecommunications in the area in which it serves," he said, "GTE's operations, by contrast, are widely scattered."[61] In reaching his conclusion, Judge Greene stressed the dispersed, predominantly rural nature of the GTE companies' operations; and added that this dispersion has "substantial consequences in terms of monopoly control":

> Unlike the Bell Companies, which were dominant almost everywhere, the GTE companies are relatively thinly dispersed over 31 states. In fact, in terms of concentration, the GTE companies serve roughly half as many telephones per square mile as do the Bell Operating Companies. This dispersion has, of course, substantial consequences in terms of monopoly control. And, while the Bell Operating Companies serve the vast majority of the high-density, heavily-populated metropolitan areas..., the GTE Operating Companies serve primarily the nation's rural and suburban areas.[62]

As recently as March 1992, the court placed heavy emphasis on these differences in granting to GTE a waiver of restrictions in the GTE decree.[63] The court's

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60 *United States v. GTE Corporation* ("*U.S. v. GTE*" or "GTE Consent Decree"), 603 F.Supp. 730, 733-36 (D.C.D.C. 1984).

61 *Id.* at 737.

62 *Id.* at 734, footnotes omitted.

63 *U.S. v. GTE*, 1992 U.S. Dist. LEXIS 4781. Granting a waiver to GTE, the court said:

> GTE requests ... a waiver of the decree.... GTE stresses some of the factual differences between it and the Regional Companies. GTE serves [portions of] 101 LATAs which is far more than are served by any of the Regional Companies. The cost to GTE of installing STPs and/or data bases in each of its 101 LATAs therefore would be far higher than the analogous cost for a Regional Company, amounting to well over $1 billion [as against $60 million for US WEST]. GTE's operations are more national in scope and serve primarily the nation's rural and suburban areas, in contrast to the concentration of much of the Regional Companies' service in urban areas.

careful review of these matters reinforces the sound judgments made by the FCC in the past.

In summary: On four occasions the Commission has closely examined GTE in comparison to the BOCs; the anti-trust court has done the same. In every case the outcome was a conclusion that important differences that deny GTE the opportunity and incentive to engage in anti-competitive conduct justify different treatment.

3. The facts that apply today demonstrate that GTE's case is even stronger in terms of the criteria applied by the Commission.

Taking account of the Contel merger, GTE's case is now even stronger in terms of the criteria applied by the Commission. Specifically:

First: nationwide distribution. GTE's service areas are today to a greater extent "distributed nationwide in a large number of noncontiguous geographic areas."[64] Thus to a greater extent today it is correct to say: "This circumstance effectively prevents GTE from exercising monopoly control in large regions of the country, comparable to those served by the BOCs."[65]

Second: density, particularly of business customers. Today to a greater extent, in comparison to the BOCs: "GTE service areas tend to be smaller (fewer access lines per exchange), less densely populated (fewer access lines per square mile), and they contain a smaller percentage of business customers."[66] Thus to a greater extent today these "factors indicate that GTE has more limited opportunities than the BOCs to use bottleneck control over local exchange facilities for

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> While the AT&T decree and the GTE decree have generally been treated in parallel fashion, this need not be done where, as here, there is a fundamental, substantive difference between the two situations.

Footnotes omitted.

64 *Phase II Order*, 2 FCC Rcd at 3101.

65 *Id.*

66 *Id.*

anticompetitive purposes in the enhanced services marketplace to the detriment of competitive providers and their customers"; and therefore applying the *BOC Requirements* to GTE "would extend regulation unnecessarily...."[67]

Third: Predominantly suburban and rural with fewer major business customers. Today to a greater extent a "key distinction between the BOCs and GTE" is that "most of GTE's service areas" have a "predominantly suburban and rural character" that contains "fewer major business customers."[68]

Fourth: Neither national nor regional concentrated control of bottleneck facilities. Today "GTE has neither national nor regional concentrated control of bottleneck facilities comparable to that exercised by the BOCs" with the same narrow exceptions identified in 1988: "Hawaii, and perhaps Tampa and selected areas of Los Angeles." And today to an even greater extent "GTE's service areas are relatively small in numbers of lines when compared to the BOC service areas."[69]

Fifth: Fractionalization. Today as in the past, the result of the foregoing is a "fractionalization of service territories [that] discourages, if not prevents, GTE from using its dominant position within its local exchange service areas for anticompetitive purposes...."[70]

Sixth: Surrounded by BOC territory. Today as in the past, "GTE territories are surrounded by the territories of other service providers, usually BOCs, that are in position to compete with GTE...."[71]

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67 *Id.*

68 *D.86-79 Report & Order*, 2 FCC Rcd at 158.

69 *Id.*

70 *Id.*

71 *Id.*

In the course of considering the BOC/GTE differences, the Commission recognized that it is not simply a matter of size.[72] The question being grappled with is what restrictions are required to protect the public from the consequences of anticompetitive action. Clearly a key to this question is the extent of a company's ability to take anticompetitive action.

Having found that there existed "factors [that] indicate that GTE has more limited opportunities than the BOCs to use bottleneck control over local exchange facilities for anticompetitive purposes in the enhanced services marketplace to the detriment of competitive providers and their customers,"[73] the Commission decided to treat GTE differently from the BOCs.

Today the very same factors continue to provide the BOCs with important economies of scale and scope not available to GTE, as shown by the following:[74]

1. Following the Contel merger, GTE is far more rural and dispersed than it was. GTE now provides service in forty states instead of thirty-one. This merger added approximately 20 percent more access lines, but nearly doubled the total service territory.[75] In the thirty-eight states of the United States mainland served by GTE, today BOC serving areas are three times as densely

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[72] *See Phase II Order*, 2 FCC Rcd at 3100-01; *D.86-79 Report & Order*, 2 FCC Rcd at 156.

[73] *Phase II Order*, 2 FCC Rcd at 3101.

[74] Many of GTE's facts were accepted by the *Notice* and included in its n.29, *quoted supra.*

[75] Prior to the merger, GTE had approximately 231,000 square miles and 13.2 million access lines. Contel served approximately 212,000 square miles and 2.6 million access lines.

populated as GTE's areas, which far exceeds the differential stressed by Judge Greene in 1984, when the BOCs' areas were twice as dense.[76]

2. Thus, each BOC serves contiguous markets with high line densities across no more than 39 Local Access and Transport Areas (LATAs), while GTE serves markets that are geographically dispersed across portions of 139 LATAs with line densities typically one-third that of the BOCs. For example, in the states where both GTE and BOCs operate, BOCs have a 76 percent share of access lines while serving only 34 percent of the land area, whereas GTE has 13 percent of the access lines while serving 17 percent of the land area.[77]

3. GTE's 16.1 million domestic access lines are served from 6,441 switching entities, while US WEST, at 1,847, has the largest number of switching entities of all the BOCs.[78]

4. The GTE serving wire centers (central offices) are generally very small. Almost 2,900 of the 4,363 central offices are smaller than 2,000 lines. Only 407 GTE switches are larger than 10,000 lines.[79]

5. The BOCs serve very large markets, *e.g.*, New York, Chicago, Houston, and Los Angeles, whereas GTE serves much smaller markets. For

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[76] "[T]he GTE companies serve roughly half as many telephones per square mile as do the Bell Operating Companies." *U.S. v. GTE*, 603 F. Supp. at 734, footnote omitted.

[77] Illinois is particularly illustrative. GTE serves 52% of the square miles and Ameritech serves 22 percent, yet GTE serves only 11 percent of the access lines while Ameritech serves 83% of the access lines. *See* Computer III Remand Proceedings: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623 ("D.90-623"), GTE's Reply Comments filed April 8, 1991, at Exhibit I.

[78] Source: 1991 FCC ARMIS Report No. 43-07. Bell South has 1,680 switching entities with Common Language Location Identifier (CLLI) codes, Ameritech has 1,438, Bell Atlantic has 1,414, Southwest has 1,380, NYNEX has 1,336, and Pacific Telesis has 862.

[79] Attachment D illustrates the sizes of GTE serving wire centers.

example, GTE has a major presence in only two of the top 50 markets (*i.e.*, Metropolitan Statistical Areas or "MSAs").[80]

6. BOC dominance of these major markets has important consequences for GTE marketing. In the thirty-eight mainland states served by GTE, only 6.5 percent of all firms with more than one business location have their headquarters in GTE's franchised areas.

Moreover, as a consequence of the more concentrated character of BOC areas today and in the past, the BOCs have moved further than GTE into standardization of operational practices and procedures and OSS.[81] Until GTE achieves the same level of standardization, the result will be higher operating costs. For example, there is still some variation in the process followed to take a customer order and install service among GTE operating territories. Influenced by having to provide tariffed service under regulation by forty state commissions, there are variations among offerings and the mechanized systems employed to deal with, for example, customer billing.[82]

The more concentrated serving territories that typically include metropolitan areas with large business customers provide economies of scale and scope for the BOCs that are simply not present for GTE. This lower cost per unit for the BOCs coupled with a higher total demand for more sophisticated services allows the BOCs to more easily cost-justify the deployment of new services.

Notwithstanding divestiture, the BOCs are served by Bellcore. While each BOC makes its own procurement decisions, the existence of Bellcore makes it very likely that the BOCs will come to essentially the same decisions. When it comes to development

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[80] Attachment E demonstrates the GTE presence in the top 50 markets.

[81] This reflects the creation of both GTE and Contel through many mergers and acquisitions.

[82] Billing systems are not uniform throughout GTE. *See* Attachment F for a listing of GTE's operational support systems.

of advanced technologies and architectures, and the associated creation of new services, Bellcore supports the BOCs. It is the simple reality that the BOCs lead the industry in the introduction and tariffing of new network services. The typical scenario continues to be that the BOCs introduce a new service, and independent telephone companies such as GTE respond at a later date with their own introduction if warranted by market conditions.

In addition, the BOCs (properly) take into account Bellcore research and recommendations in procuring hardware, software and systems. With the BOCs comprising roughly eighty percent of the exchange carrier market, a vendor will be very reluctant to step outside of what is approved by Bellcore and accepted by individual BOCs. Vendors will be far less influenced by exchange carriers outside the Bellcore/BOC category, even a company as large as GTE. The pattern visible all around the industry is that vendors primarily produce to meet Bellcore/BOC needs and specifications. This is reinforced by Bellcore/BOC participation in standards-setting bodies, which heavily influences the adoption of industry standards.

In summary: The totality of these BOC/GTE differences represents an even stronger case than the Commission accepted in the past as justification for different regulatory treatment of GTE.

4. GTE is subject to more state regulatory oversight than in 1987, and far more than any of the BOCs.

A further consideration is that GTE is subject to more thorough regulatory scrutiny than it was in 1987, and far more than in the case of any of the BOCs. GTE was regulated by thirty-one state commissions in 1987. Today, by virtue of the Contel

merger, GTE's business practices are subject to the scrutiny of forty state commissions.[83]

The contrast with the BOCs is dramatic. US WEST is the BOC that operates in the most states, *i.e.*, fourteen states.[84] US WEST is thus subject to only a third of the state regulatory oversight faced by GTE (14 ÷ 40 = 35 percent). Pacific Telesis is the BOC subject to regulation from the fewest state jurisdictions, two, an even smaller fraction.[85] Once again, the dispersed nature of GTE operations reduces any potential for anti-competitive behavior because it provides another level of active governmental oversight to guard against anti-competitive behavior.

The heavy regulatory burden GTE shoulders and the prospect of unnecessary additional FCC requirements places GTE at a distinct disadvantage vis-a-vis its competitors. GTE's competitors are not similarly regulated, nor do they have artificial boundaries drawn (*i.e.*, LATAs) in which they can provide services. Regulation of the services of these competitors being at best perfunctory, they are much better able to avoid disparities between state and interstate offerings. They are not faced with the legal market entry and exit prohibitions to which GTE is subject. For example, under the GTE Consent Decree, the GTE local exchange entities are prohibited from offering interexchange (*i.e.*, interLATA) services, whereas their competitors are not.

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[83] GTE is subject to regulation in: Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin.

[84] US WEST is subject to regulation in: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

[85] Pacific Telesis is subject to regulation in California and Nevada.

Customers do not care about LATA boundaries or state boundaries or regulatory constraints on service suppliers; they simply want to have their needs met. Service providers that can satisfy their needs efficiently and without artificial limitations will be awarded a customer's business. As the telecommunications marketplace becomes increasingly nationwide and competitive, the Commission should adopt policies that lessen the burden of regulation on exchange carriers. This makes doubly irrational imposition of an entirely new set of restrictions on GTE just as the pressures of the marketplace are increasing, and at a time when GTE is subject to more intensive regulatory scrutiny than ever before.

In summary: GTE is subject to the most extensive regulatory oversight of all LECs. And now, the Commission is poised to add yet more regulations upon GTE.

5. The *Notice* represents an unexplained departure from prior Commission policy.

The *Notice* does not challenge the foregoing facts -- virtually all of which were presented to the Commission in writing before release of the *Notice*. Indeed, the *Notice* (at n.29) relates many of these facts. And the *Notice* (at para. 10) adds: "GTE's merger with Contel has increased the extent to which it serves sparsely populated areas."

Further, in the course of concluding that "not applying ONA and nondiscrimination safeguards to GTE" is "not warrant[ed]", the *Notice* (at para. 10) observes "the geographic dispersal of GTE's service areas" and "its operations are comprised to a greater extent of small, rural local exchanges." Then it says (*id.*):

> We tentatively conclude that the geographic dispersal of GTE's service areas, and the fact that its operations are comprised to a greater extent of small, rural local exchanges, does not warrant not applying ONA and nondiscrimination safeguards to GTE.

In reaching this conclusion, the Commission relies on what it decided was **not** a decisive factor on four previous occasions: GTE's size.

> While GTE has been more geographically dispersed than any BOC and the Contel merger has made it more so, it is also larger than many of the BOCs by many measures. We tentatively conclude that the benefits that

> could be achieved in view of its size and resources outweigh the fact that it is geographically dispersed.

Id. Now sheer size, it seems, has become just what it was not on four previous occasions: a determinative factor. This is accomplished, as indicated *supra*, by speaking of "benefits" to be extended on a larger base while ignoring costs.

The analytic approach the Commission employed in 1987[86] -- and on three other occasions -- identified benefits and costs, then subtracted costs from benefits, and concluded there was no net benefit in applying the *BOC Requirements* to GTE. Here the *Notice* states that the greater size of GTE increases the benefits, ignores any possibility of an increase in costs, and pronounces that a positive net benefit adheres to the decision to impose the *BOC Requirements* on GTE. This skips an entire logical step and produces a conclusion unsupported by its own supposed logic.

In assessing cost, the cost-causative factors examined by the FCC in 1987 in relation to imposing the *BOC Requirements* on GTE are now -- as shown broadly and in detail *supra* -- more potent than they were then. The very logic the Commission applied in the past to this problem would suggest costs have increased at a greater rate than benefits. And yet the *Notice* tentatively reverses the conclusion previously reached.

Expressed mathematically, if the previous conclusion was:

> B minus C equals a negative J
>
> where B is the Benefit and C is the Cost of imposing the *BOC Requirements* on GTE, and J is the Justification for doing so.
>
> Then, the *Notice* says, greater Size (S) added to both B and C will produce a positive J.

But this would be logically valid only if S had a greater impact on B than it had on C, *i.e.*, if the nature of the greater increase in Size were such that it would produce a

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[86] *Phase II Order*, 2 FCC Rcd at 3101-02.

greater increase in B relative to C. However, as shown *supra*, **applying the very criteria employed by the Commission itself**, not only is this not the case; the contrary is the case. Under the criteria applied by the Commission in assessing Benefits and Costs, the increase in GTE's Size does not transform the negative J into a positive J; it makes J more negative.

Given that the *Notice* does not reject the criteria previously applied or propose new ones -- except implicitly by the result reached -- this formulation necessarily raises the question of whether the Commission has violated the principle of the *Greater Boston* case cited by the Supreme Court in *Motor Vehicle*: In departing from prior practices and adopting a new regulatory approach, an agency "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion, it may cross the line from the tolerably terse to the intolerably mute."[87]

In summary: The *Notice* represents an unexplained departure from prior Commission policy.

6. It is even clearer today that the NATA petition is without merit.

As discussed *supra*, the Commission twice decided not to apply to GTE CPE-related restrictions that had been applied to the BOCs. The Commission's line of reasoning was essentially similar to that applied in the case of Enhanced Services.

NATA was an active participant at both stages. The association insisted that a requirement be imposed on GTE for COGs regardless of the differences between the BOCs and GTE. The Commission could hardly have been more emphatic in rejecting this proposal.

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[87] 444 F.2d at 852, *quoted*, 463 U.S. at 57.

The Commission rejected NATA's reiteration of arguments against the FCC's analysis distinguishing GTE from the BOCs, adding:.

> [W]e now have more than three years of additional experience with the operations of the industry since we extended the structural separation requirements to the BOCs. [O]ur decisions both to remove those requirements from the BOCs and to decline to extend the new nonstructural safeguards to the ITCs, including GTE, are based on our analysis of developments in the industry and our evaluation of the regulatory structure that will best promote the efficient operation of telecommunications markets and ensure the widespread availability of high quality products and services at reasonable prices.[88]

Specifically, the Commission found "the record does not provide any support for NATA's claim that GTE is discriminating against independent CPE vendors."[89] The Commission referred to certain "problems discussed by NATA [which] are quite limited in number....", finding "NATA has not demonstrated that such problems constitute anticompetitive behavior by GTE against its CPE competitors."[90] Concluding again there was no need for imposing a COG requirement on GTE, the Commission said: "[W]e find it significant that no one has filed formal or informal complaints with this Commission alleging that GTE has discriminated in its provision of network services to non-affiliated CPE vendors or their customers."[91]

Now comes the inexorable NATA petition asking to have the matter opened up once again. No new arguments are presented. No facts are offered to show anti-competitive behavior on the part of GTE. There is no attempt to deal with the question of differences vis-a-vis the BOCs. Now as in 1987, NATA would have the FCC require establishment of a COG in thinly populated GTE territory -- where there cannot be the revenue to cover the cost – just as readily as in population centers served by the

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88 *D.86-79 Modified Order*, 3 FCC Rcd at 28.

89 *Id.*

90 *Id.*

91 *Id.*

BOCs. And now as in 1987, "formal or informal complaints with this Commission alleging that GTE has discriminated in its provision of network services to non-affiliated CPE vendors or their customers" are conspicuous by their absence.

In fact, GTE's share of the CPE market has declined precipitously since 1987. *See* Attachment G. This rapid decline argues forcefully against the notion that independent CPE vendors are being disadvantaged by GTE's anticompetitive action.

Grant of the NATA petition would merely complicate this CC Docket No. 92-256. GTE urges the FCC to keep its focus on the relevant issues.

Accordingly: The FCC should reject NATA's petition.

IV. APPLYING THE *BOC REQUIREMENTS* TO GTE IS UNNECESSARY AND WOULD HARM GTE.

1. Any proposal to apply the *BOC Requirements* to GTE must take into account the far less favorable market position of GTE compared to the BOCs and the far greater proportionate costs that would be generated by such requirements.

In proposing to apply the *BOC Requirements* to GTE, the *Notice* (at paras. 6, 8, 10) is focused on the possibility that GTE would use its market position for purposes of anti-competitive action. In this connection, the *Notice* (at para. 10) refers to the large size of GTE and tentatively concludes that the benefits of applying ONA regulations to GTE would "outweigh the fact that it is geographically dispersed." But today as in 1987, the characteristics of GTE as opposed to the BOCs militate against possible anti-competitive action for one essential reason: the market position of GTE is completely different from, and much less favorable, than the market position of the BOCs.

Although GTE resembles the BOCs as far as total customer lines served, the geographical distribution of GTE's customers differs significantly from each of the

BOCs. *See* Attachments H and I.[92] Size and customer distribution directly impact four very important aspects of operating telephone companies: (i) financial strength; (ii) overhead costs; (iii) operating costs; and (iv) marketing costs.

In two of these important aspects, financial strength and overhead cost, GTE does resemble the BOCs today -- as it did in 1987. Historically, an important advantage of the Bell System was its ability to spread overhead costs over many more customers than GTE. One of the primary reasons for the GTE-Contel merger was to enable GTE to reduce overhead costs per customer. Once GTE is able to complete consolidation of ordering, billing, provisioning and other systems across its operating territories, there will be economies that will permit GTE to spread overhead over a larger customer base than in the past.

Historically, BOC concentrations in major urban areas have provided them with significant economies of scale in terms of operating costs and marketing costs. GTE simply does not enjoy comparable economies.

There are three major components of LEC provisioning costs: customer loops, end-office switching and inter-office transport.[93] Copper cable size, switch size (lines and trunks) and fiber optic system capacity are the primary cost drivers. GTE is able to realize BOC-like cable sizes, switch sizes and fiber optic system capacities in only three locations: California, Florida and, to a lesser extent, Hawaii. In the other thirty-seven states in which GTE operates, the characteristics of GTE's service areas deny GTE these economies.

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92 Attachment H contains data which illustrate significant differences between GTE and the BOCs. Table B-USW illustrates some resemblance between GTE and US WEST, but Attachment I shows significant marketplace disadvantages for GTE versus US WEST.

93 Including tandem switching.

Smaller cities, towns and rural areas comprise 60 percent of GTE loops. No BOC serves such a preponderance of non-major metropolitan areas. Unlike the BOCs, the operating economies enjoyed by GTE in California, Florida and Hawaii are counter-balanced by the lack of such economies in GTE operations in thirty-seven other states.

The following table demonstrates the sizable disadvantages of GTE regarding copper cable size, switch size and fiber optic system capacity:

Table I

Density Parameters

	GTE	BOC Average	BOC Advantage
Average Copper Cable Size (pairs per cable)	224	524	57%
Average Fiber Cable Size (fibers per cable)	14	32	56%
Access Lines Per Central Office	2,897	11,468	75%

These density parameters cause the GTE operating cost diseconomies illustrated as follows:

Table II[94]

Cost Parameters

	GTE	BOC Average	BOC Advantage
Cable & Wire Facilities (C&WF) Investment Per Access Line	$892	$720	24%
C&WF Expense Per Access Line	$44	$38	16%
Switching Investment Per Access Line	$453	$351	29%
Switching Expense Per Access Line	$26	$20	30%
General and Administrative Expense Per Access Line	$72	$74	<3%>

On average, GTE's cable and wire facility expenses per access line and switching expense per access line exceed BOC expenses by 16 percent and 30 percent, respectively. These operating cost diseconomies justify GTE's concerns that the added costs associated with implementing additional rules imposed by the Commission will exacerbate GTE's operating and marketing disadvantages. Indeed, FCC action of this kind would tend to negate the benefits of GTE's efforts to partially off-set operating disadvantages (a direct result of density differences) by tightly controlling overhead costs (General and Administrative Expense Per Access Line). Table II also shows a comparison of overhead costs. The comparability of overall size between GTE and the average BOC is demonstrated by the similarity of GTE and BOC overhead cost per access line.

Once again, these facts show it is simply erroneous to assume -- as the *Notice* does -- that GTE is in the same position as the BOCs with regard to possible anti-

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[94] The sources for the foregoing tables are 1991 Form M Reports (GTE data includes former Contel operations in California, Illinois, Indiana, Missouri, New York, Texas and Virginia) and 1991 ARMIS Reports.

competitive action merely because of its aggregate size. In 1987, after careful examination, the FCC sensibly avoided making that unsound assumption; it should do so once again.

While any exchange carrier has in-depth knowledge and strong relationships within a community to which it provides service, the BOCs are best able to couple these factors with the ability to advertise their services throughout the major metropolitan areas they serve without paying the "tax" associated with advertising to many in order to reach the few.

This "advertising tax" is explained in Attachment I. It consists of the cost of mass media advertising when "eligible" (in-franchise) customers constitute only a portion of the market area. This "advertising tax" is significant for GTE.

In the six MSAs that contain the most GTE customers,[95] the tax amounts to 104 percent.[96] In the next six MSAs,[97] the tax is 126 percent. In the next six MSAs,[98] the advertising tax is 269 percent.

For GTE and other ITCs, this tax is a heavy counter-balance to whatever marketing advantages they derive from their local presence. A non-LEC firm free to serve any customer in a market typically advertises to the entire market. In general, BOCs are able to do the same. Serving all or nearly all of a market, their advertising

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95 Los Angeles-Long Beach, California; Tampa-St. Petersburg-Clearwater, Florida; Riverside-San Bernadino, California; Dallas, Texas; Honolulu, Hawaii; and Seattle, Washington.

96 This represents the ratio of out-of-franchise (non-eligible) customers to in-franchise customers in the MSAs.

97 Anaheim-Santa Ana, California; Portland, Oregon; Lakeland-Winter Haven, Florida; Oxnard-Ventura, California; Santa Barbara-Santa Monica-Lampoc, California; and Fort Wayne, Indiana.

98 Sarasota, Florida; Washington, D.C.-Maryland-Virginia; York, Pennsylvania; Lexington-Fayette, Kentucky; Erie, Pennsylvania; and Raleigh-Durham, North Carolina.

will embrace the entire market. GTE, on the other hand, has to purchase advertising market-wide but typically can only derive benefit in a small portion of the market. This imposes on GTE an immense diseconomy in its approach to the marketplace.

The notion that GTE possesses some overwhelming marketing advantage is directly contradicted by understanding these simple realities. Imposition of the *BOC Requirements* on GTE is a "cure" for an "ill" that already has a natural enemy: the advertising tax.

In summary: A proposal to impose the *BOC Requirements* on GTE should be grounded on an understanding of these realities: (i) GTE's market position is far less favorable than that of the BOCs; (ii) the proportionate cost impact on GTE would be far greater; and (iii) GTE's ability to engage in anti-competitive activity is far less.

2. The *BOC Requirements* applied to GTE would impose increased costs and burdens.

Over and above the already-existing disadvantages of GTE, discussed *supra,* the *Notice* would impose the *BOC Requirements*. These would make GTE incur significant tangible and intangible costs with little or no perceived ESP demand or offsetting benefits.

GTE estimates the cost to implement the *BOC Requirements* at approximately $20 million in the first year. This cost would be $36 million and $51 million over five and ten years respectively.[99]

Besides these very real dollar costs, imposition of the *BOC Requirements* will also complicate and confuse the interaction between GTE and its customers. This will cause ongoing inefficiencies in operation. For example, as described more fully *infra*, CPNI rules will add to customer confusion, inconvenience and irritation beyond what

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[99] *See* Attachment A.

has already been realized with the voluntary safeguards implemented by GTE.[100] Addition of layers of complexity will make the customer interaction more complex and confusing, and create an incentive for customers to avoid GTE in favor of competitors.

In summary: The *BOC Requirements* imposed on GTE would generate significant tangible and intangible costs with little or no offsetting benefits.

V. PROCEDURES GTE ALREADY HAS IN PLACE ACHIEVE THE GOALS OF THE CEI/ONA PROGRAM.

1. The *Notice* does not recognize the extent to which GTE is in demonstrated compliance with the spirit of the nondiscrimination rules.

The *Notice* (at para. 8) suggests that with the Contel merger: "The increased scope of GTE's operations and its increased financial strength enhances GTE's ability to participate in the enhanced services market and its ability and incentive to discriminate." This statement is unexplained and, in view of past Commission decisions, inexplicable. The Contel merger, as shown supra, increased those characteristics that justified different treatment. GTE was a very large company in 1987 -- with immense financial strength.[101] The Commission's 1987 decision correctly identified sheer size of the aggregate company, and associated "financial strength", as irrelevant to the key issues. How does GTE's becoming a still-bigger company alter the equation? The logic the Commission applied in the past invalidates the reasoning that

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[100] As shown *infra*, since GTE already protects customer information as proprietary, it is unnecessary to prompt customers for additional restrictions. GTE already honors a written customer request for CPNI restriction from GTE's Enhanced Services marketing and sales personnel. Consumers favor suppliers with whom it is easy to do business.

[101] In 1986, GTE's Telephone Operating Group had revenues of $11.3 billion and $2.9 billion in net income. In 1991, the counterpart figures were $15.7 billion and $4.0 billion.

a bigger GTE – which is more rural, more dispersed -- changes the company's ability or incentive to discriminate.

In 1987, when the Commission decided that nonstructural safeguards should not apply to ITCs, including GTE, the Commission said it would "stand ready to revisit this issue after BOC implementation ... if at that time it appears that GTE [is] not achieving the goals of CEI and ONA to the extent possible, or if otherwise it appears that [GTE is] engaging in discrimination against enhanced service providers."[102]

With no trace of a showing that GTE has engaged in discrimination against ESPs, the *Notice* tentatively concludes the *BOC Requirements* should apply to GTE. And yet GTE submitted to the Commission before release of the *Notice* voluminous materials,[103] and provided extensive briefings,[104] showing that GTE has in place procedures that assure GTE will "achiev[e] the goals of CEI and ONA to the extent possible,"[105] given the characteristics of GTE's operating areas.

GTE will now demonstrate once again that it does indeed achieve the goals of CEI and ONA to the extent possible -- and without generating substantial and unnecessary costs that will either be recovered from the ESP customer base or will prove unrecoverable. In fact, GTE has voluntarily met the underlying intent of the *BOC Requirements*, and is prepared to show how it has done so.

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[102] *Phase II Order*, 2 FCC Rcd at 3102.

[103] *See* "Should the CEI/ONA Restrictions Apply to GTE?," dated August 27, 1992, submitted to the FCC in association with the "GTE Letter" referred to in the *Notice* at n.28.

[104] GTE provided briefings to FCC personnel on September 29, 1989; October 30, 1991; August 4, 1992; and October 20, 1992.

[105] *Id.*

2. GTE has voluntarily implemented certain safeguards that replicate those implemented by the BOCs.

In respect of a number of the *BOC Requirements*, GTE has in place safeguards that replicate those employed by the BOCs. As to these items, formal imposition of the *BOC Requirements* would provide no conceivable added benefit. Attachment J explains in detail the nature of these safeguards, which consist of the following:

1. Basic Service Unbundling
2. Interface functionality
3. Pricing Terms, Conditions and Resale
4. Technical Performance
5. Nondiscrimination in Installation and Repair
6. End User Access
7. CEI Availability
8. Recipients of CEI
9. Colocation/Minimization of Transport Costs
10. Allocation of joint and common costs
11. Aggregate CPNI
12. 120 Day New Service Request Process.

3. As to all of the remaining safeguards comprising the *BOC Requirements*, GTE has voluntarily implemented safeguards that achieve the goals of CEI/ONA.

In addition to the foregoing, GTE has in effect internal procedures designed to achieve the goals of CEI/ONA in a way suited to the particular characteristics of GTE and its operating areas. The salient points are summarized as follows:

CPNI: GTE's implementation of CPNI safeguards to satisfy the goals of CEI/ONA is demonstrated in detail, *infra.*

OSS: As described *infra*, for order entry and trouble reporting GTE meets "same form of OSS access requirement" applicable to the BOCs under the *BOC ONA*

Amendment Reconsideration Order.[106] Further, GTE is developing an OSS access service for access service customers -- keyed into the ordering and billing systems of IXCs -- that might also be useful to ESP customers. However, as to the GTE offering of OSS access for other ordering and billing systems, this would involve creation of an entirely new service keyed to the completely different requirements of ESPs. There is not sufficient demand for this offering to allow cost recovery. GTE is willing to satisfy *bona fide* ESP customer needs assuming that customer utility, demand levels, and technical and economic feasibility criteria can be met.

ONA reporting requirements: As shown *infra*, for GTE to provide the same reports as the BOCs would be far more costly than any benefit that could conceivably be derived from information based on the suburban and rural areas of dispersed populations characteristic of GTE's serving areas.

Network Information Disclosure: GTOC Tariff FCC No.1[107] incorporates the FCC's Network Information Disclosure rules in the form of the "*All Carrier Rule*"[108] and Section 68.110 of the Commission's Rules. Both require GTE to notify customers of any network change which will affect the technical parameters of the customer's network interface or which would impact the function of the customer's CPE. GTE's procedures mandate compliance with

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106 *BOC ONA Amendment Reconsideration Order* at para. 4: "We reaffirm our decision in the *BOC ONA Amendment Order* and require that until the BOCs can demonstrate that indirect access and direct access to the OSS services specified in that order are comparably efficient, the BOCs[']enhanced services must take the same types of access to those specified OSS services for BSAs and BSEs used for BOC enhanced services as the BOCs provide to other ESPs once structural separation requirements are lifted." Footnote omitted.

107 *See* Attachment K.

108 *Computer II Reconsideration Order*, 84 F.C.C.2d at 82-83.